

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

WA RASIC CONSTRUCTION CO. INC.  
4150 Long Beach Blvd.  
Long Beach, CA 90807

Employer

Dockets 13-R3D1-2951 and 2952

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by WA Rasic Construction Company, Inc. (Employer) matter under submission, renders the following decision after reconsideration.

**JURISDICTION**

Beginning on March 13, 2013, the Division of Occupational Safety and Health (the Division) conducted an accident inspection at a place of employment controlled by Employer in Gypsum Canyon, Yorba Linda, California. On September 21, 2013, the Division cited employer for one general violation containing three items, and one serious violation of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup> The citation at issue in this Decision After Reconsideration, Citation 2, alleges a Serious violation of section 1600 subdivision (s) [Hoisting of piling shall be done by hooks provided with a means to prevent accidental disengagement or a shackle shall be used in place of a hook.].

Employer filed timely appeals of the citations.

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<sup>1</sup> Unless otherwise specified, all references are to California Code of Regulations, Title 8. Citation 1, Item 1 alleges a General violation of section 1615.3 subdivision (a)(1). Citation 1, Item 2 alleges a General violation of section 1615.3 subdivision (a)(3). At hearing, DOSH withdrew Citation 1, Item 2 as duplicative of Citation 1, Item 1. Citation 1, Item 3 alleges a General violation of section 1613.9 subdivision (a).

Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision on June 25, 2015.

The Board granted the Employer's timely filed petition for reconsideration of the ALJ's Decision on September 18, 2015.

### **ISSUE**

Was a violation of section 1600 subdivision (s) demonstrated by a preponderance of the evidence by the Division?

### **FINDINGS OF FACT**

1. On March 13, 2013 Employer was engaged in the removal of piling with a vibrating pile extractor and driver, referred to as an ABI machine.
2. During the course of extracting a pile, the chain on the ABI machine broke, causing a pile to fall onto the operator's cab.
3. The ABI machine connected to the piles by means of chains. The chains were looped from a connection point on the ABI machine's driving head, through holes on the pile, and then back through the driving head. The end of the chain consists of a "T-handle" which prevents accidental disengagement of the chain and piling.

### **DECISION AFTER RECONSIDERATION**

#### **Was a violation of section 1600 subdivision (s) demonstrated by a preponderance of the evidence by the Division?**

Citation 2 alleges a violation of section 1600 subdivision (s), which reads as follows: "Hoisting of piling shall be done by hooks provided with a means to prevent accidental disengagement or a shackle shall be used in place of a hook." The Division's alleged violative description states:

On 3/13/2013 employer was found to have been hoisting piles at the job site without using hooks or shackles to prevent accidental disengagement.

The safety orders contain no definition of the term "hook," and the parties are in disagreement as to whether the device used by Employer meets the section 1600 subdivision (s) standard. The device itself was not at fault in the accident that occurred at Employer's worksite; rather, a chain broke, causing a pile to fall onto the cab of the ABI machine.

Where a term has been left undefined in the regulations, it must be given a reasonable and common sense interpretation consistent with its apparent purpose and intent; one that is practical rather than technical in nature, and will result in wise policy rather than absurdity. (*Marin Storage and Trucking, Inc. dba Reliable Crane and Rigging*, Cal/OSHA App. 90-148, Decision After Reconsideration (Oct. 25, 1991), citing *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 170.) A hook in this context is a device that assists in connecting and securing heavy materials, such as the piles at issue in this accident. The device used by the Employer, referred to as a “T-handle”, is inarguably used for making a connection and keeping the connection secure. No rebuttal evidence was entered into the record to suggest that the device was not designed for hooking materials together, or that the T-handle was less secure than other forms of securing devices.

We therefore find that the Employer’s use of a T-handle did not constitute a violation of section 1600 subdivision (s), and vacate the citation and associated penalty.

ART CARTER, Chairman  
ED LOWRY, Board Member  
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: JAN 29, 2016

## SUMMARY TABLE DECISION AFTER RECONSIDERATION

In the Matter of the Appeal of:

**W A RASIC CONSTRUCTION COMPANY, INC.**  
**Docket No(s). 2013-R3D1-2951 & 2952**

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 315533349

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	APPEAL	VERIFIED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY ASSESSED BY ALJ	FINAL PENALTY ASSESSED BY BOARD
13-R3D1-2951	1	1	1615.3(a)(1)	G	ALJ vacated violation.		x	\$375	\$0	<b>\$0</b>
13-R3D1-2951	1	2	1615.3(a)(3)	G	DOSH withdrew as duplicative of Cit. 1, Item 1.		x	\$750	\$0	<b>\$0</b>
13-R3D1-2951	1	3	1613.9(a)	G	ALJ vacated violation.		x	\$750	\$0	<b>\$0</b>
13-R3D1-2952	2	1	1600(s)	S	Board vacated violation.		X	\$5,060	\$5,060	<b>\$0</b>
<b>Sub-Total</b>								\$6,935	\$5,060	<b>\$0</b>

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$0**

NOTE: Payment of final penalty amount should be made to:  
Accounting Office (OSH)  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94142

\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties.  
Please call (415) 703-4291 if you have any questions.

POS: 1/29/2016